

**STATE OF CONNECTICUT  
DEPARTMENT OF SOCIAL SERVICES  
OFFICE OF LEGAL COUNSEL, REGULATIONS, AND ADMINISTRATIVE HEARINGS  
55 FARMINGTON AVENUE  
HARTFORD, CT 06105-3725**

██████████, 2023  
Signature Confirmation

Case ID # ██████████  
Client ID # ██████████  
Request # ██████████

**NOTICE OF DECISION**  
**PARTY**

██████████  
██████████  
██████████  
████████████████████

**PROCEDURAL BACKGROUND**

On ██████████, 2023, ██████████ (“the “Facility”) issued a Notice of Emergency Transfer To A Hospital to ██████████ (the “Appellant”) indicating its intent to emergently discharge the Appellant, citing as its reason for discharge that she required care in a hospital.

On ██████████, 2023, the Appellant requested an administrative hearing to contest the Facility’s proposed discharge.

On ██████████, 2023, the Office of Legal Counsel, Regulations, and Administrative Hearings (“OLCRAH”) issued a notice scheduling the administrative hearing for ██████████, 2023.

On ██████████, 2023, in accordance with Connecticut General Statutes, §§ 19a-535 and 4-176e to 4-184, inclusive, the OLCRAH held an administrative hearing. The following individuals participated in the hearing:

- ██████████, Appellant
- Attorney ██████████, ██████████, Counsel for ██████████
- ██████████
- ██████████, Facility Administrator, ██████████
- ██████████, Director of Admissions, ██████████
- ██████████, Director of Social Services, ██████████
- Joseph Davey, Administrative Hearing Officer

The hearing record remained open for the submission of additional information by [REDACTED] and the Appellant. Information was submitted by both parties and the hearing record closed on [REDACTED], 2023.

A separate decision has been issued for the issue of failure to readmit.

### **STATEMENT OF THE ISSUE**

The issue is whether the Facility followed state law and federal regulation when it proposed to emergently discharge the Appellant.

### **FINDINGS OF FACT**

1. On [REDACTED], 2023, the Appellant was admitted to the Facility for short-term rehabilitation with a principal diagnosis of cellulitis II. (Facility's Exhibit 6: Information Received from [REDACTED] upon Appellant's admission to [REDACTED] dated [REDACTED], Facility's testimony)
2. The Appellant's stay in the Facility was paid for through her managed Medicare plan via [REDACTED]. (Facility's testimony)
3. The Appellant is active on the Qualified Medicare Beneficiaries ("QMB") program but does not receive full Medicaid benefits. (Appellant's testimony, Facility's testimony)
4. The Appellant's medical history includes a diagnosis of COPD, lymphedema, lipedema, and diabetes. (Facility's Exhibit 6, Facility's testimony)
5. On [REDACTED], 2023, the Appellant signed a "Financial Acknowledgements and Consent" form at the Facility which stated in relevant part: "I do not request that the facility reserve a bed for me during my absence from the facility due to hospitalization...If I have chosen not to reserve a bed, I understand that readmission to the facility cannot be guaranteed on the date of discharge from the hospital." In addition, the Appellant was given a "Notice Regarding Reservation of the Resident's Bed if the Resident is Hospitalized." The notice stated in relevant part that "If the resident's bed is not reserved, when the resident is ready to be discharged from the hospital, the facility will readmit the resident to the first semi-private bed that becomes available (or to the first private room that becomes available if a private room is medically necessary). The facility cannot guarantee that a bed will be available at the time the resident needs to be discharged from the hospital". (Facility's Exhibit 2: Financial Acknowledgements and Consent form dated [REDACTED], Facility's Exhibit 3: Notice Regarding Reservation of the Resident's Bed if the Resident is Hospitalized)

6. After the Appellant was admitted, the Facility determined a bariatric bed was necessary for the Appellant's treatment and rented one from a third party. (Facility's testimony)
7. The Facility provided physical and occupational therapy for the Appellant as part of her treatment. (Facility's testimony)
8. On [REDACTED], 2023, the Facility transferred the Appellant to [REDACTED] (the "Hospital") for difficulty breathing and increased weight gain in her abdomen and legs that the Facility had concerns may be linked to heart problems. (Facility's Exhibit 10: [REDACTED] APRN's Clinical Notes concerning the Emergency Transfer to [REDACTED] on [REDACTED], Facility's testimony, Appellant's testimony)
9. On [REDACTED], 2023, the Appellant and the Hospital were provided with a "Notice of Emergency Transfer to a Hospital" form which outlined that the Appellant's transfer to the Hospital was made because "your welfare or the welfare of others in the facility will be endangered if we do not make this transfer immediately." (Facility's Exhibit 4: Notice of Emergency Transfer to a Hospital form dated [REDACTED])
10. On [REDACTED], 2023, the Facility electronically reported the Appellant's transfer/discharge to the State Ombudsman portal. (Facility's Exhibit 8: Confirmation of submission of the [REDACTED] Notice of Emergency Transfer to a Hospital to the Office of Long-Term Care Ombudsman's Portal)
11. The Appellant is not disputing the [REDACTED], 2023, transfer from the Facility to the Hospital. (Appellant's testimony)

### **CONCLUSIONS OF LAW**

1. Conn. Gen. Stat. § 19a-535 (h) (1) authorizes the Commissioner of Social Services or the commissioner's designee to hold a hearing to determine whether a transfer or discharge is being affected in accordance with regulation.  
  
Conn. Gen. Stat. § 19a-535 (a) (3) provides that a "transfer" means the movement of a resident from one facility to another facility or institution, including, but not limited to, a hospital emergency department, if the resident is admitted to the facility or institution or is under the care of the facility or institution for more than twenty-four hours
2. "The department's uniform policy manual is the equivalent of a state regulation and, as such, carries the force of law." *Bucchere v. Rowe*, 43 Conn. Supp. 175, 178

(1994) (citing Conn. Gen. Stat. § 17b-10; Richard v. Commissioner of Income Maintenance, 214 Conn. 601, 573 A.2d 712 (1990)).

3. Uniform Policy Manual (“UPM”) § 1570.25 (c)(2)(k) provides that the Fair Hearing Official renders a Fair Hearing decision in the name of the Department, in accordance with the Department’s policies and regulations. The Fair Hearing decision is intended to resolve the dispute.

During the administrative hearing, the Appellant testified that she was not disputing her ██████████, 2023, emergency transfer from the Facility to the Hospital. Both the Appellant and the Facility agree that ██████████, 2023, emergency transfer was necessary.

The Appellant’s hearing issue has been resolved. Therefore, there is no issue on which to rule. “When the actions of the parties themselves cause a settling of their differences, a case becomes moot.” McDonnell v. Maher, 3 Conn. App. 336 (Conn. App. 1985), citing, Heitmuller v. Stokes, 256 U.S. 359, 362-3, 41 S.Ct. 522, 523-24, 65 L.Ed. 990 (1921). The coverage which the Appellant had requested has been approved; there is no practical relief that can be afforded through an administrative hearing.

### DECISION

The Appellant’s appeal is DISMISSED as moot.



Joseph Davey  
Administrative Hearing Officer

CC: ██████████, Facility Administrator, ██████████

## **RIGHT TO REQUEST RECONSIDERATION**

The appellant has the right to file a written reconsideration request within 15 days of the mailing date of the decision on the grounds there was an error of fact, law, and new evidence has been discovered, or other good cause exists. If the request for reconsideration is granted, the appellant will be notified within 25 days of the request date. No response within 25 days means that the request for reconsideration has been denied. The right to request a reconsideration is based on §4-181a (a) of the Connecticut General Statutes.

Reconsideration requests should include specific grounds for the request: for example, indicate what error of fact or law, what new evidence, or what other good cause exists.

Reconsideration requests should be sent to the Department of Social Services, Director, Office of Administrative Hearings and Appeals, 55 Farmington Avenue Hartford, CT 06105-9902.

## **RIGHT TO APPEAL**

The appellant has the right to appeal this decision to the Superior Court within 45 days of the mailing of this decision, or 45 days after the agency denies a petition for reconsideration of this decision if the petition for reconsideration was filed timely with the Department. The right to appeal is based on §4-183 of the Connecticut General Statutes. To appeal, a petition must be filed at Superior Court. A copy of the petition must be served upon the Office of the Attorney General, 165 Capitol Avenue, Hartford, CT 06106, or the Commissioner of the Department of Social Services, 55 Farmington Avenue Hartford, CT 06105. A copy of the petition must also be served on all parties to the hearing.

The 45-day appeal period may be extended in certain instances if there is good cause. The extension request must be filed with the Commissioner of the Department of Social Services in writing no later than 90 days from the mailing of the decision. Good cause circumstances are evaluated by the Commissioner or the Commissioner's designee per §17b-61 of the Connecticut General Statutes. The Agency's decision to grant an extension is final and is not subject to review or appeal.

The appeal should be filed with the clerk of the Superior Court in the Judicial District of New Britain or the Judicial District in which the appellant resides.